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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Sixth session

SUMMARY RECORD OF THE 24th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 11 December 1991, at 10 a.m.

Chairman: Mr. ALSTON

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The meeting was called to order at 10.15 a.m.

REPORT OF THE COMMITTEE TO THE ECONOMIC AND SOCIAL COUNCIL (agenda item 11) (continued) (E/C.12/1991/CRP.1 and Add.1 to 10; E/C.12/1991/CRP.2 and Add.1 and 2)

General comment No. 4 (E/C.12/1991/CRP.2/Add.1) (continued)

Paragraph 8 (e) (continued)

1. Mrs. BONOAN-DANDAM thought that the list of beneficiaries of "some degree of priority consideration in the housing sphere" in the third sentence should be kept rather than just the term "disadvantaged groups", which had too broad a connotation and might be interpreted too freely by some States to suit their interests. "Victims of natural disasters" and "persons living in disaster-prone areas" might also be included in the list.

2. Mr. MRATCHKOV said that, if the list was kept, it must be made clear that it was indicative and not exhaustive.

3. The CHAIRMAN said that a solution might be to begin the third sentence with the words: "Thus such disadvantaged groups, including the elderly, etc." and, to add the words "as well as the victims of natural disasters" and "persons living in disaster-prone areas" after the words "disadvantaged groups" in the second sentence.

4. Paragraph 8 (e), as amended, was adopted.

Paragraph 8 (f)

5. Mr. SPARSIS proposed the addition of the words "child-care facilities" after "schools" in the first sentence, since one of the reasons preventing women from working was that there were no facilities of that kind where they could leave their children. In addition, the adjective "social" should be deleted before "facilities" at the end of the sentence because developing countries might have difficulty in setting up social facilities in the strict sense, which meant that in many cases child care would be entrusted to grandparents or other members of the family.

6. Mr. SIMMA proposed the deletion of the word "particularly" at the beginning of the second sentence, which should be reworded to read: "This is true both in rural areas and in large cities ...", which was closer to the truth.

7. Paragraph 8 (f), as amended, was adopted.

Paragraph 8 (g)

8. Mr. SIMMA proposed that the end of the first sentence, after the word "must", should be amended to read "... appropriately enable the expression of cultural identity and diversity of housing".

9. It was so decided.

10. Mr. SIMMA proposed that a suggestion by Mr. Neneman might be taken into account by adding the following words to the end of subparagraph (g): "and that such housing includes, inter alia, facilities for satellite and cable television".

11. The CHAIRMAN pointed out that dwellings in many countries did not even have running water - where that was the case, such a recommendation would be grotesque. He suggested keeping to a more general formulation, such as: "and that such housing includes modern technological facilities, as appropriate".

12. It was so decided.

13. Paragraph 8 (g), as amended, was adopted.

Paragraph 9

14. Paragraph 9 was adopted.

Paragraph 10

15. Mr. SIMMA proposed the following amendments: (1) reword the end of the first sentence, after "adequate housing" to read "are often viewed as being time-consuming, complex and costly."; (2) insert the following sentence between the first and second sentences: "However, these steps do not necessarily involve complex procedures or substantial public expenditures."; (3) delete the word "But" at the beginning of the third sentence.

16. Mr. SPARSIS thought that a stronger tone was called for and suggested replacing the first two sentences of the paragraph by: "Irrespective of a country's degree of development, certain steps must be taken immediately".

17. Mr. SIMMA considered that the wording proposed by Mr. Sparsis was too strong. He would prefer a more flexible tone in order to let it be seen that the Committee was aware of the difficulties some States would have in taking the steps in question.

18. Mr. SPARSIS said that, familiar as he was with the situation in some States, he could not be "flexible" with Governments that had not taken even the most elementary steps in the housing sphere.

19. The CHAIRMAN said that, if Mr. Simma did not object, the Committee would adopt the version of the paragraph proposed by Mr. Sparsis.

20. Paragraph 10, as amended, was adopted.

Paragraph 11

21. Mrs. JIMENEZ BUTRAGUEÑO said that the first sentence sounded confused; after the word "priority" it should read: "on groups of society living in deprived conditions, giving them preferential treatment".

22. Paragraph 11, as amended, was adopted.

Paragraph 12

23. Mr. SIMMA proposed the addition of the following sentence at the end of the paragraph: "Furthermore, steps should be taken to ensure coordination between ministries in order to reconcile related policies (economic, agricultural, environmental, energy, etc.) with the obligations arising out of article 11 of the Covenant."

24. Mr. SPARSIS agreed with Mr. Simma's proposal, subject to the addition after "ministries", of "and local authorities".

25. Mrs. JIMENEZ BUTRAGUEÑO proposed the further addition of "regional authorities and other bodies".

26. Mr. SIMMA also proposed the addition of the words "and mutually satisfactory" before the word "consultation" in the last sentence of paragraph 12.

27. Mr. KONATE stressed that it was the Committee's duty to encourage dialogue and not to impose agreement among the parties in question.

28. Mr. SPARSIS proposed that the various views might be reconciled by using the word "genuine" and saying "genuine, extensive consultation".

29. Paragraph 12, as amended, was adopted.

Paragraph 13

30. Mr. MARCHAN ROMERO considered that, as it now stood, paragraph 13 weakened the scope of article 11, paragraph 1 of the Covenant. The Committee could not give the impression that a State was complying with its obligations under article 11, paragraph 1 of the Covenant merely by taking steps to "ascertain the full extent of homelessness and inadequate housing". He therefore proposed the insertion of the words "inter alia" between the words "demonstrate" and "that it has taken" in the second sentence of paragraph 13.

31. Paragraph 13, as amended, was adopted.

Paragraphs 14 to 16

32. Paragraphs 14 to 16 were adopted.

Paragraph 17

33. Mr. ALVAREZ VITA, referring to the Spanish version of the text, proposed that the final sentence of the paragraph should be drafted in the indicative rather than the conditional mood.

34. The CHAIRMAN endorsed Mr. Alvarez Vita's proposal and proposed similarly that in the English version of the text, the word "might" should be replaced by "would" in the final sentence. The text would now read: "In some legal systems it would also be appropriate ...".

35. Mr. FOFANA pointed out that, at least in countries under French law, courts ruled on specific cases and did not have the power to issue general orders or "injunctions". Consequently, the appeals procedure provided for under (a) in the second sentence of paragraph 17 did not exist in those countries.

36. The CHAIRMAN said that some wording must be found that did not exclude any of the major legal systems and proposed that the beginning of the second sentence of the paragraph should be amended to read: "Depending on the legal system, such areas might include but would not be limited to:".

37. It was so decided.

38. Paragraph 17, as amended, was adopted.

Paragraph 18

39. Mr. ALVAREZ VITA said that in the Spanish version the use of the conditional gave the impression that the members of the Committee did not all agree with the idea expressed in the paragraph, which was not the case. He therefore suggested that the words "sólo podrían justificarse" (could only be justified) should be replaced by "sólo son justificables" (can only be justified).

40. The CHAIRMAN said he shared that view and proposed that the words "could only be justified" should be replaced by "can only be justified" in the English version.

41. Paragraph 18, as amended in the Spanish and English versions, was adopted.

Paragraph 19

42. Mr. ALVAREZ VITA proposed that the indicative mood should be used systematically instead of the conditional mood in that paragraph, for the reason already given. In the Spanish version, "deberían" should accordingly be replaced by "deben" in the last four sentences of paragraph 29.

43. Mr. SIMMA raised the objection that the Committee's general comments were not binding but were by way of recommendation, a nuance that was clearly reflected in the use of the conditional. It might in fact be more a question of usage than of actual meaning, since at the United Nations, "should" was used in preference to "must" in English texts.

44. Mr. ALVAREZ VITA said that he was well aware that the Committee's general comments did not entail any obligation, but pointed out that the experts on the Committee were there in their personal capacity; they did not, therefore, necessarily have to adopt United Nations practice and, without exceeding their mandate, could unquestionably say in a general comment what they thought must be done to ensure the application of any rights set forth in the Covenant. Using the conditional to express a view that was fully endorsed by the Committee would amount to toning down such an assertion.

45. The CHAIRMAN said that it was perhaps just a language problem; in English, "should" was strong enough.

46. Mrs. JIMENEZ BUTRAGUEÑO agreed with Mr. Simma that the distinction should be drawn between States parties' obligations under the Covenant and the conduct recommended to them so that they could fulfil their obligations. In the case at issue, the conditional (deberían) seemed too weak and the present (deben) too peremptory, and she would opt for the future tense (deberán).

47. Mr. ALVAREZ VITA endorsed that solution for the Spanish version of the text.

48. The CHAIRMAN noted that the members of the Committee agreed to replace "deberían" by "deberán" in the Spanish version of the last four sentences of the paragraph under consideration, which remained unchanged in the English version.

49. Paragraph 19, as amended, was adopted.

50. General Comment No. 4 (1991), as a whole (E/C.12/1991/CRP.2/Add.1), as amended, was adopted.

51. The CHAIRMAN said that, in adopting that general comment on one of the rights set forth in the Covenant, the Committee had taken a significant step forward in a process which must remain open-ended, since there was nothing to prevent the Committee from reconsidering the comment at a later stage to refine and update it in the light of any comments and suggestions made by Governments, competent United Nations agencies and the non-governmental organizations concerned, or even experts on the subject.

ORGANIZATION OF WORK (agenda item 4) (continued)

Review of methods of work of the Committee

Relations with other treaty bodies

52. The CHAIRMAN reminded Committee members that they had agreed to designate from among themselves the experts who would be responsible for following the work of other treaty bodies and briefing the Committee on any new developments relating both to substantive issues considered by those bodies and to their methods of work which might be of particular relevance to the Committee.

53. Mrs. Ider offered to follow the work of the Committee on the Elimination of Discrimination against Women, Mrs. Bonoan-Dandam that of the Committee on the Rights of the Child, Mr. Simma that of the Committee on the Elimination of Racial Discrimination, Mrs. Jimenez Butragueño that of the Committee against Torture and Mr. Mratchkov that of the Human Rights Committee. He proposed to designate those experts as the Committee's "liaison officers" with those bodies.

54. It was so decided.

55. Mr. SIMMA asked whether the "liaison officers" were simply meant to inform the Committee of changes in the methods of work of the other treaty bodies or whether they also had to report on doctrinal developments.

56. The CHAIRMAN said that one did not preclude the other if the new developments were relevant to the Committee's work, although the primary concern was the methods of work of the other monitoring bodies; nor was there anything to prevent the designated expert from drawing attention to cases where the report submitted to the competent body by a State party had raised major problems. Ultimately, it was for the experts to determine what they thought would be most helpful in improving coordination between the various treaty bodies so as to avoid overlapping and duplication in their work in the future.

57. Mrs. JIMENEZ BUTRAGUEÑO expressed the view that it would be useful for the designated experts to meet to exchange views and establish a common position on what their task should entail.

58. The CHAIRMAN suggested that those concerned might agree among themselves on holding such a meeting.

Public information activities

59. The CHAIRMAN recalled that, at its fourth session and again at its fifth session (E/1991/23, para. 260), the Committee had requested the Secretary-General to undertake the preparation of a brochure describing the work of the Committee in detail. In the meantime, as the Committee had been informed at the beginning of the sixth session (E/C.12/1991/SR.1), the Centre for Human Rights had published a fact sheet on the Committee (Fact Sheet No. 16) which he thought was most inadequate. He therefore proposed that the Committee should take note of Fact Sheet No. 16 and state at an appropriate place in its report that, while welcoming that publication and noting that it included four pages of general information on the work of the Committee, the Committee considered that it did not satisfy the need for a booklet "describing in detail the work of the Committee". The Committee would also state that, because of the continuing widespread lack of awareness of its work, there remained a pressing need for a detailed and informative analysis of its functions, procedures and concerns and the measures it had taken, and for that analysis to be made widely available. The Committee would therefore request the Secretary-General to make appropriate arrangements, as soon as possible, to ensure the preparation of such an analysis. For that purpose it would authorize its Chairman to pursue the matter with the Secretariat and to inform it at its next session of any progress made.

60. The Chairman's proposal was adopted.

Resource room

61. The CHAIRMAN recalled that the Committee had repeatedly requested that a resource room should be made available to it. Since the request had elicited no response, he proposed that the Committee should renew its request in the

terms it had used in its report on the fifth session (E/1991/23, paras. 261 and 262), subject to any necessary changes and adding the following text:

> "The Committee observed that it made little sense for the Secretary-General to be offering various forms of technical assistance to States parties in relation to the Covenant and other instruments while failing to take a major step specifically requested by the meeting of persons chairing the human rights treaty bodies held in 1988 and reiterated by the Committee in 1989, twice in 1990 and in 1991. It therefore expressed the hope that the matter would be treated with the urgency it deserved. It indicated that such an information facility should be located in the Centre for Human Rights and not in the Library or any other location distant and detached from the Centre."

62. The Chairman's proposal was adopted.

The role of United Nations information offices

63. The CHAIRMAN proposed, on the subject of United Nations information offices, that the Committee should repeat in its report on its sixth session what it had said in its report on its fifth session (E/1991/23, para. 268), with the following addition:

> "The Committee took note with satisfaction of the information provided by the Under-Secretary-General for Human Rights to the effect that this recommendation would henceforth be implemented by all information offices."

In doing so, the Committee would simply be taking note of the positive response to one of its requests.

64. The Chairman's proposal was adopted.

Day of general discussion

65. The CHAIRMAN proposed that the day of general discussion at the following session should be devoted to approaches at the national level for promoting the realization of economic, social and cultural rights and for giving effect to the obligations set forth in the Covenant.

66. Mr. KONATE pointed out that there had also been a proposal to prepare a discussion note on article 15 of the Covenant which would serve as a basis for the general discussion at the Committee's forthcoming session.

67. The CHAIRMAN withdrew his initial proposal and suggested that the Committee's general discussion at its seventh session should focus on the right to take part in cultural life as recognized in article 15 of the Covenant.

68. It was so decided.

Follow-up to the discussion note on the problems of the elderly (E/C.12/1991/WP.1)

69. Mrs. JIMENEZ BUTRAGUENO said that she wondered, in the light of Committee members' comments, how the work she would be undertaking to follow up the discussion note on the problems of the elderly which she had submitted to the Committee at its current session would fit into the Committee's deliberations at its seventh session.

70. The CHAIRMAN recalled that the Committee had decided to ask Mrs. Jimenez Butragueño to continue her study of the question of the elderly and to focus her further research specifically on the interrelationship between the various parts of the Covenant and issues relating to the elderly. He proposed that the Committee should also ask Mrs. Jimenez Butragueño to prepare a draft general comment on the subject. The draft would be submitted, inter alia, to the representatives of the competent organizations and bodies which might make their own comments, and would be considered by the Committee for adoption.

71. It was so decided.

Remuneration of Committee members

72. The CHAIRMAN reminded the Committee that it had decided (E/C.12/1991/SR.22) to ask the meeting of Chairpersons of the human rights treaty bodies to look into the reasons why the members of three of those bodies, including the Committee, received no remuneration. That point should be included in the Committee's report on its sixth session.

Meeting of the pre-sessional working group

73. The CHAIRMAN said that the Committee had agreed that the pre-sessional working group should meet well in advance of the Committee's session, in May, June or July, for example (E/C.12/1991/SR.22). He announced that, depending on the date fixed, the Group of Western European States would be represented either by Mr. Simma or by Mrs. Jimenez Butragueño.

74. Mr. MUTERAHEJURU said that the Group of African States designated Mr. Konate as its representative on the working group.

75. Mr. MRATCHKOV said that the Group of Central European and Eastern European States proposed to designate Mr. Neneman to represent it on the working group.

Non-submission or late submission of reports

76. The CHAIRMAN said that, pending the designation by the Group of Asian States and the Group of Latin American States of their representatives on the working group, the Committee might attempt to settle the matter of non-submission or late submission of reports by States parties.

77. At its fifth session, the Committee had recommended a draft decision (E/1991/23, draft decision I) for adoption by the Economic and Social Council,

listing by name 12 States which had been parties to the Covenant for more than 10 years but had yet to submit even an initial report. The draft had responded to the concern expressed by the General Assembly, the Economic and Social Council and the Commission on Human Rights that the Covenant should be rendered meaningless by States which failed to comply with their obligations while proclaiming that they were parties to the Covenant. The Committee had also recommended that the Under-Secretary-General for Human Rights should transmit a note verbale to each of the States parties that had not yet submitted a single report and ask them if they required assistance in preparing their reports. It appeared that that initiative had been fruitless since 11 of the States listed in draft decision I had still not responded to the appeal. It would therefore be necessary at the current session to adopt either a draft decision worded in exactly the same terms as the previous one and naming the 11 States, or a text taking account of the fact that a year had elapsed since the adoption of the previous draft decision and that a larger number of States had therefore been parties to the Convention for more than 10 years. If the second solution was adopted, the words "for more than 10 years" should be replaced by "since at least 1982", and 16 States would be listed by name.

78. Mr. NENEMAN proposed that, for practical reasons, a deadline should be set for the submission of reports by States in arrears, for example the date of the opening of the World Conference on Human Rights.

79. The CHAIRMAN said that the Committee might also follow the new system adopted by the Committee on the Elimination of Racial Discrimination (CERD).

80. Mr. HOUSHMAND (Representative of the Secretary-General) explained the system in question: CERD informed the States concerned that it would be considering, at its following session, on the basis of previous reports and any other available information, how the Convention on the Elimination of All Forms of Racial Discrimination was applied on their territory. CERD invited those States to submit information in the intervening period and, if they so wished, to have representatives attend the meeting at which CERD considered the situation in their country. The system applied only to periodic reports that were 10 to 15 years overdue, however, and not initial reports by States parties. Furthermore, it had only been in operation for a few months and it was too early to assess its effectiveness.

81. The CHAIRMAN said that the Committee might state that it attached the utmost importance to the receipt of reports, that it noted that in many cases States parties had not submitted a periodic report for many years and that it intended, at its following session, to adopt a timetable for the consideration of the reports of those States parties according to criteria that would be determined at that time. The Committee would have to calculate the exact number of States with overdue reports and specify the number of years in arrears it considered unacceptable; it might say, for example, that, as from the seventh session, the case of any State party whose periodic report had not been submitted for at least five years would be placed on the agenda of a subsequent session. In that way States parties would know that the Committee was keeping a watchful eye on any failure by them to meet their obligations.

82. Mr. KONATE observed that it should be for the Secretary-General to take the initiative in offering the advisory services of the Centre for Human Rights to States in difficulty. By merely noting, as was stated in the last sentence of the draft decision adopted at the fifth session, that those States might wish to avail themselves of those services, the Economic and Social Council was losing sight of the fact that Governments were not always aware of the services available to them.

83. The CHAIRMAN agreed with Mr. Konate that, in its new draft decision, the Committee might request the Secretary-General to "make contact with" those States to offer them the necessary advisory services.

84. Mr. NENEMAN thought that it would be a good idea, as the Chairman was proposing, to draw up a timetable for consideration of the situation in States whose reports were long overdue; furthermore, it would be easier for the Centre for Human Rights to plan ahead if it knew how many States were late in submitting their reports and at what Committee session the situation of those States would be examined. The timetable could be sent to the States parties with a covering note inviting them to submit a report before the date scheduled for consideration of their situation. That would be better than repeating a draft decision which had had no effect.

85. The CHAIRMAN said that he was open to any initiative showing that the Committee was determined to demonstrate the utmost firmness. He proposed that in the case of States that had already submitted an initial report, the Committee should adopt the CERD approach of informing those States that it was intending to place consideration of the situation in States that had failed to submit any further reports for over five years on the agenda of one of its forthcoming sessions. The case of States that had not yet submitted a single report was more difficult to handle. Perhaps those States should be informed that the Committee was proposing, at its following session, to adopt a procedure for consideration of reports applicable to States parties that were more than 10 years late in submitting their initial reports.

86. Mr. MRATCHKOV stressed the fact that the decision concerning the non-submission of reports by States parties adopted by the Economic and Social Council on the Committee's proposal at its fifth session had not yielded the expected results. However, given the importance of the issue, he subscribed to the idea of adopting another decision along the same lines giving the names of the States which had been parties to the Covenant for at least 10 years and had still not submitted an initial report.

87. Regarding States parties that had not submitted reports for five or six years, the exact length of time remaining to be determined, he thought that the Committee should indeed state in the report on its sixth session that, concerned as it was about the non-submission of periodic reports, it was placing the question on the agenda of its next session.

88. Mr. SIMMA, responding to Mr. Mratchkov's comment that the Committee's initial decision had had no effect, said that States whose names might be included in the second draft decision had perhaps sent in their reports in the meantime.

89. With regard to an assessment of the situation in States parties that had not even submitted an initial report, he pointed out that the Committee on the Elimination of Racial Discrimination had the benefit of information provided by a large number of non-governmental organizations, which was not the case of the Committee on Economic, Social and Cultural Rights. While agreeing to the idea of adopting a new draft decision on the non-submission of reports and of announcing that the Committee would be considering the adoption of an appropriate procedure at its following session, he wondered how the Committee could make up for the lack of information from States parties.

90. The CHAIRMAN said that the Committee might request the Secretariat, the Chairman, the Rapporteur or the officers to collect information about a State party from United Nations bodies and organizations and compile a file which would certainly be more substantial than those usually submitted by States parties. In any event, the lack of reports ought not to prevent the Committee from fulfilling its mandate. The present situation was unacceptable, because there were, on the one hand, States parties which submitted reports and sometimes came in for criticism from the Committee or were asked to provide additional information and, on the other, States parties which did not submit reports and went uncriticized. He saw no harm in postponing consideration of the matter until 1992, but thought that, rather than making a recommendation to the Economic and Social Council, the Committee should state in its report that it was most concerned about the non-submission of initial reports by States that had been parties to the Covenant for many years, and that it had decided to consider at its following session how the matter could best be settled in each case, in accordance with the letter and spirit of the Covenant.

91. Mrs. JIMENEZ BUTRAGUEÑO proposed the insertion, in the table of contents of the report on the sixth session, for instance under Chapter II between section A on States parties and section B on the opening and duration of the session, of a new section concerning countries that had not submitted reports. That would be bound to draw attention to the countries which were not complying with their obligations.

92. The CHAIRMAN agreed with that idea and proposed the further addition, at the end of the Committee's report, of the list of States parties that had never submitted initial reports and of those that had not submitted periodic reports for more than five years, for example.

93. Mr. BADAWI endorsed the Chairman's proposal to collect information about States parties which had never submitted a report to United Nations bodies and agencies. The Committee would need to decide whom might be entrusted with the task of compiling the file and what sources might be used. The Committee should look into those matters at the following session. In any case, whatever decision it took in regard to States parties that did not comply with their obligations, it must be more strongly worded.

94. The CHAIRMAN said that he would prepare a draft decision which he would submit to the members of the Committee before the end of the session.

Procedure to be followed in examining additional information requested of States parties (continued) (E/C.12/1991/SR.15)

95. The CHAIRMAN proposed to the Committee that it should transmit to France and the Netherlands the recommendations of the pre-sessional working group (E/C.12/WG/1991/CRP.12 and 13), as amended by the Committee, accompanied by a note verbale or a letter from the Chairman informing them of the discussion in the Committee regarding the additional information submitted by those countries (E/1989/5/Add.1 and Add.2) and of its decision to examine such additional information at its following session (E/C.12/1991/SR.15).

96. It was so decided.

Note to the Government of the Dominican Republic (continued) (E/C.12/1991/SR.19)

97. Mr. SIMMA, reverting to the question of the note to be sent to the Government of the Dominican Republic on the subject of large-scale evictions, recalled that there had been some question of a possible visit to the country to look into the matter (E/C.12/1991/SR.19).

98. The CHAIRMAN proposed an addition to the text of the note which had been adopted, namely, that, in accordance with articles 22 and 23 of the Covenant, advisory services could be provided to the State party concerned and that the Committee was prepared, if need be, to send one or more members to the Dominican Republic for that purpose.

99. It was so decided.

Letter to be sent to States parties which had not submitted reports

100. Mrs. JIMENEZ BUTRAGUEÑO said she understood that the Secretariat was to have drafted and submitted to the Committee a model letter requesting States parties that had not done so to submit their reports.

101. The CHAIRMAN said that the Secretariat had in fact prepared a draft letter but that he had not time to examine it. As it was not an official Committee document, he proposed that the officers should be entrusted with the task of finalizing the wording of the letter.

102. It was so decided.

The meeting rose at 12.45 p.m.